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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,594	03/01/2002	John D. Muzzy	52005-1013	1163

7590

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EXAMINER

ASINOVSKY, OLGA

ART UNIT	PAPER NUMBER
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1711

6

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/087,594	MUZZY, JOHN D.	
	Examiner	Art Unit	
	Olga Asinovsky	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 01 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> . | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-11 of U.S. Patent No. 6,271,270. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims of the Patent 6,271,270 disclose a thermoplastic composite comprising a matrix of recycled thermoplastic and a plurality of high modulus fibers, wherein said recycled thermoplastic is derived from carpet. The recycled thermoplastic and high modulus fibers in the claims 1-11 of the Patent 6,271,270 are readable in the applicants' claims. The statement in the present claims that each of said reinforcing fibers has a minimum modulus of one million psi would be inherent in the claims 1-11 in the Patent 6,271, 270 because of the same high modulus fibers are claimed in the claims 1-11 in the Patent 6,271,270.

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3. The difference between the present claims and the claims 1—11 of the patent 6,271,270 is the requirement in the present claims that a thermoplastic composite is in the form of pellets. It would have been obvious to one of ordinary skill in the art to use a thermoplastic composite in the claims 1-11 of the Patent 6,271,270 wherein a said thermoplastic composite can be palletized or granulated since any desired shape form of the thermoplastic composite can be produced in the claims 1-11 in the patent 6,271,270 by using an extruder having desired construction of die.

4.

(1) Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fink U.S. Patent 5,578,357 in view of Sperk, Jr. et al U.S. Patent 5,258,445.

The present invention is a thermoplastic composite comprising a recycled thermoplastic and fibers having a high modulus, for the present claims 1-10. Also, the present claims 11-29 discloses a method of forming a thermoplastic composite by combining a thermoplastic with reinforcing fibers and extruding through a die.

Fink discloses recyclable carpet comprising an isotactic polypropylene and fibers of nylon or polyester, or any of the natural or synthetic fibers, glass fibers, column 7, lines 31, 33-35 and 42-43 and column 8, lines 5-6, and column 9, lines 26-28, for the present claim 1. The fibers in Fink's invention are the same that in the present claim 1, therefore, the high modulus value would be inherent for the fibers in Fink's invention. A matrix of the isotactic polypropylene can include thermoplastic elastomer that is readable such as non-recycled material for the present claim 3. Fink discloses a method for recycling synthetic carpet by an extruder, abstract and column 13, lines 57-59. An extruder of any conventional or desired construction adapted to force the molten polymer through the die and extruding the polymer into a desired shape, column 5, lines 12-13, for the present claims 1 and 11.

The difference between the present claims and Fink is the requirement in the present claims 7 and 13 that fibers have a predetermined length of at least $\frac{1}{2}$ inch or between $\frac{1}{8}$ inch and $\frac{1}{4}$ inch, for the present claims 7-8 and 13, 20 and 22.

Sperk, Jr.'445 discloses a fiber-reinforced thermoplastic molding composition. The fibers include organic fibers such as aramid fibers and inorganic fibers such as glass fibers, column 17, lines 31-44. Glass fibers have a modulus of elasticity of around 10.5 million psi, column 17, line 3. Glass fibers having lengths of between about $\frac{1}{8}$ inch to two inches can be utilized, column 17, lines 42-43. Also, the length of non-glass fibers can be from about $\frac{1}{8}$ inch to about $\frac{1}{2}$ inch, column 17, lines 66-67 and column 18, lines 1-3.

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It would have been obvious to one of ordinary skill in the art to modify the recyclable carpet comprising an isotactic polypropylene and fiber in Fink's invention by including fibers having specified length of approximately ½ inch as suggested by Sperk, Jr. because the length of the fiber is a benefit to improve the strength and flexibility of the obtained thermoplastic composite, and since the fibers having any length in Fink's invention can be utilized.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Fink U.S. Patent 5,578,357.

Fink has been discussed above in the paragraph 4.

Fink discloses recyclable carpet comprising an isotactic polypropylene and fibers. An isotactic polypropylene and fibers are readable in the present claims. The same fibers would inherently have the same high-modulus value as a minimum modulus of one million psi in the present claim 1. Fink discloses a method for recycling synthetic carpet by an extruder that could have the desired construction to force the molten polymer through the die, for the present claim 11.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 703-308-0041. The examiner can normally be reached on 9:00 to 5:30 pm.

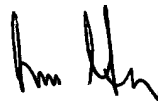
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

O.A.

O.A.
June 25, 2003

Olga Asinovsky
Examiner
Art Unit 1711



James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700